



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: October 20, 2006 REPORT NO. 06-155

ATTENTION: Land Use and Housing Committee
Agenda of October 25, 2006

SUBJECT: Recognized Community Planning Group Bylaws Update Process

REFERENCE: CMR-05-145, dated June 8, 2005, Revisions to Council Policy 600-24
Pertaining to Standard Operating Procedures and Responsibilities of
Recognized Community Planning Groups

REQUESTED ACTION:

Provide direction on the community planning group bylaws update process, including whether and how planning groups may deviate from the standardized bylaw shell for issues that are consistent with Council Policy 600-24 entitled *Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups*.

STAFF RECOMMENDATION:

Support planning groups' compliance with the standardized bylaws shell that was developed at the recommendation of the Community Planners Committee subcommittee and was strengthened based on City Council discussion in June 2006.

SUMMARY:

Background

In 2003, Planning Department staff began working with a subcommittee of the Community Planners Committee (CPC) on revisions to Council Policy 600-24. Revisions were proposed to address a variety of issues that staff, community planning groups and City Council members identified as interfering with effective planning group operations. After numerous working sessions with the CPC subcommittee, and a Land Use and Housing Committee (LU&H) workshop, the revisions were approved by CPC on March 22, 2005. LU&H subsequently recommended approval of the revisions on June 15, 2005 and the revisions were approved by the City Council on October 17, 2005 (Attachment 1). The Council directed staff to work with planning groups to update their bylaws to reflect the revised Council Policy by April of 2007.

Also in 2003, Planning Department staff and the CPC Subcommittee began working on revisions to the Administrative Guidelines for Council Policy 600-24. Revisions were proposed to reflect the revised council policy and provide community planning groups with more guidance on how to operate effectively. The revisions, which did not require City Council action, were approved by CPC in April of 2006.

Subsequent to the revisions to the Administrative Guidelines, staff began to consider how to revise individual planning group bylaws. The revisions to Council Policy 600-24 necessitated amendments to all planning groups' bylaws. Staff felt strongly that, in order for community planning groups to maximize their effectiveness as land use advisory bodies, the procedures under which they operate and under which representatives are elected must be made consistent throughout the City (with a few selected, predetermined options on certain specific issues). Too much time has been spent administrating different bylaws in different planning groups and in a few cases trying to resolve legal disputes over process, democracy rights and similar issues. CPC agreed with staff that a standardized bylaw 'shell' would be useful both in preparation of new bylaws and in maintaining future compliance. Staff made a shell available to community planning groups in March of 2006. The shell included clearly written language to implement the council policy, but also provided options for planning groups to choose from in areas where a range of alternatives is currently utilized by various groups and those alternatives are all consistent with the council policy. The shell provided increased predictability by standardizing typical community planning group operations. Reaction by planning groups was generally positive.

On June 20, 2006, while discussing whether to provide legal indemnification and representation for the La Jolla Community Planning Association, the City Council discussed Council Policy 600-24 and the community planning group bylaws revision process. Council members clearly stated their support for, and reliance upon, planning groups. However, several council members expressed a desire for more standardized operations among groups, a better documented election process, and assurances of open, noticed meetings. The City Council also suggested that the issue of the bylaw revisions and deviations be addressed by LU&H in the fall of 2006 and questioned whether more changes were needed to Council Policy 600-24.

In August of 2006, City Planning & Community Investment (CP&CI) staff (formerly Planning Department staff) revised the bylaws shell to better define the options planning groups have for investigating a violation, qualifying to vote, etc. Attachment 2 is the revised bylaws shell, including highlighting of the provisions where planning groups have the option to choose their approach to a particular topic. Attachment 2 also includes a list of the differences between the March and August shells, and includes both new standardized provisions and options that were developed following the June 2006 City Council meeting.

Many planning groups have formed bylaws subcommittees and begun the task of revising their bylaws. CP&CI staff has encouraged planning groups to strictly adhere to the language in the bylaws shell in order to allow them and their successors on the planning

groups to consistently follow their adopted bylaws, and to allow staff to consistently advise on bylaws' interpretation.

Discussion

In the course of working on bylaws updates, some planning groups have identified areas of the shell that are problematic to them because of conflicts with current operations. Other groups have stated there are specific provisions of the bylaws shell they intend to deviate from. These issues can generally be divided into two categories: those that deviate from the bylaws shell and are inconsistent with Council Policy 600-24; and those that deviate from the bylaws shell yet are consistent with Council Policy 600-24. Staff will not recommend support of any deviations that are inconsistent with the council policy; however, they will be brought forward to the City Council in accordance with the council policy. Committee direction is sought on whether CP&CI should accept and sign off on (at the staff level along with the City Attorney's office) deviations from the bylaws shell that are not inconsistent with the council policy, but are inconsistent with the standardized bylaws shell.

Deviations Inconsistent with Council Policy 600-24

Deviations from the bylaws shell that are inconsistent with provisions of Council Policy 600-24 will be presented to the City Council for approval or denial in accordance with Council Policy 600-24's POLICY section which states that bylaws that do not conform to the council policy will be taken to the City Council. Staff will not recommend support of any deviation from the council policy.

There are only three known sections of the bylaws shell that planning groups are proposing to deviate from that are inconsistent with Council Policy 600-24 and will necessitate a decision by the City Council. These items relate to the number of voting members, excused absences, and the election of officers.

1. Number of Voting Members. Council Policy 600-24 and the bylaws shell (Article III, Section 1) retain the previous requirement that community planning groups have between 12 and 20 members. This was intended to ensure enough members to represent a cross section of the community but not too many members who could make planning group operations inefficient.

Several planning groups have elected memberships over 20. Staff is working with those groups to bring the number to 20 or less. If not, the deviation will be brought to the City Council for consideration.

2. Excused Absences. Due to overuse of 'excused' absences, Council Policy 600-24 and the bylaws shell incorporated new language stating that any absence constitutes an absence and that an elected member would lose their seat upon the third consecutive absence or fourth absence in a 12 month period (Article IV, Section 1 of both the bylaws shell and the council policy). Staff believes that excused absences should not receive special consideration in order to ensure that elected planning group members attend and participate in planning group meetings on a regular basis

as they were elected to do. The CPC subcommittee that worked with staff on updating the council policy and the Administrative Guidelines recommended the elimination of excused absences. The subcommittee members felt that the absence provision written into the revised council policy was liberal and considerate of individual members but didn't damage a planning group's ability to maintain a quorum for business. The many planning groups that supported the elimination of excused absences had difficulty dealing with what should constitute an excused absence, and when excused absence allowances were being abused.

Several planning groups feel this is too stringent a requirement and propose deviations similar to previous provisions which allowed excused absences without penalty.

3. Election of Officers. Council Policy 600-24 and the bylaws shell retain a previous provision that planning group officers be chosen from the elected members of the group (Article VII, Section 1). Staff believes that, for consistency, all groups should have officers elected by the elected planning group members in order for the officers to be accountable to those members.

However, at least one planning group is proposing to modify the shell to reflect their practice of having all eligible members of the community vote to elect the planning group officers as well as the planning group members.

Deviations Consistent with Council Policy 600-24

Requests for deviations from the bylaws shell that do not contradict Council Policy 600-24 requirements are more difficult to evaluate. Staff believes that all planning groups are capable of complying with the bylaws shell provisions since the shell reflects the options currently found among planning groups' bylaws. The topics below are ones where staff believes there is benefit to having consistently-written and applied bylaws, and that the shell, as written, should be adhered to.

There are six known areas of the bylaws shell that staff expects the planning groups to deviate from that would modify the bylaws shell but would be consistent with Council Policy 600-24. These items relate to voter eligibility, elections for two or more vacancies, candidate eligibility, subcommittee composition, additional requirements of project applicants, and the voting process for future bylaw revisions and other action items.

1. Voter Eligibility. As outlined in Council Policy 600-24, the bylaws shell states that to be an eligible community member and vote in an election, an individual must be at least 18 years of age and be a property owner, resident or local business person. Eligibility may be further defined in a planning group's bylaws (Article III, Section 2). The bylaws shell directs planning groups to add requirements that a person attend between one and three meetings, submit a membership application, or to otherwise demonstrate their eligibility to the group. Because it is the practice of many planning groups, the bylaws shell goes on to indicate that once an individual's eligibility is established, it is maintained until they are proven to not meet the qualifications. Staff believes that requiring planning groups to reconfirm eligibility

on an annual basis of community members who wish to vote in an election could place an unnecessary administrative burden on groups. Provisions have been added to the standardized bylaws shell to require proof of eligibility at the time of voting.

One or more of the planning groups propose to deviate from the bylaws shell by requiring eligible members to prove their eligibility on an annual basis.

2. Elections for Two or More Vacancies. The bylaws shell has added a new provision, not found in Council Policy 600-24, requiring that an election for two or more simultaneously vacant seats be conducted with all eligible voters (Article IV, Section 2). This was intended to allow the community at-large input into most elected seats. For many planning groups, having more than one vacant seat at a time may mean an opportunity to bring new perspectives onto the group, resulting in significant changes on the group. For small planning groups, near the Council Policy-minimum of 12 members, two positions is a significant percentage of the group's seats.

Some groups believe this provision is restrictive and are proposing language to allow the seated planning group members to select new members even when two or more vacancies exist.

3. Candidate Eligibility. The bylaws shell requires that "in order to be a candidate in the election, an eligible member of the community must have documented attendance at three of the planning group's last 12 meetings prior to the February regular planning group meeting preceding the election" (Article V, Section 1). This new bylaws attendance qualification, not reflected in Council Policy 600-24, is intended to ensure that candidates have a proven interest in the planning group. It reflects a common practice of many planning groups' bylaws currently in effect. It also reflects the City Council's June 2006 concerns about an election being swayed by individuals who appear at planning group meeting for the first time to vote in an election.

Several planning groups have objected to this requirement, believing it will create an unnecessary tracking requirement and reduce the potential candidate pool.

4. Subcommittee Composition. The bylaws shell states: "Any subcommittee established by the planning group shall contain a majority of members who are elected members of the planning group (Article VI, Section 2). However, Council Policy 600-24 does not contain these provisions. The Administrative Guidelines indicate that subcommittee composition is up to the individual planning group. It is staff's understanding that most planning groups operate under this provision currently. Staff believes the requirement to have a majority of a subcommittee's members be elected planning group members should be followed since these members have been elected to serve in the role, have been trained in their roles and duties as a planning group member, and are protected by the City's indemnification policy.

One group is proposing to deviate from this requirement due to their long standing use of subcommittees that are part of the community-at-large and proposes to utilize a subcommittee with a majority of non-elected members.

5. Bylaw Revisions and Other Voting Matters. Council Policy 600-24 and the bylaws shell are silent on whether all eligible voters or the elected board vote on bylaws revisions. Voting on non-election matters on a planning group's agenda is presumed by the council policy to be performed by the elected members of the planning group. The Administrative Guidelines for Council Policy 600-24 do state that only the elected members of the planning group vote on bylaw revisions (Section 4.9). Staff believes this is the proper approach since eligible members of the community (those individuals beyond the 12-20 elected members) are not subject to the provisions of the council policy, including indemnification. Also, a vote to change any bylaws provision should receive a majority vote, and it may be difficult to get a majority vote of eligible community members within a specified timeframe. An advisory vote to the planning group, based on a "room vote" prior to a formal planning group action, is not inconsistent with the council policy.

The one example of this requested deviation thus far is a group which desires to deviate from the bylaws shell to add language to maintain their system of having the electorate-at-large vote on bylaws revisions.

6. Additional Requirements of Project Applicants. The bylaws shell reflects language of Council Policy 600-24 indicating that, in reviewing individual development projects, planning groups should focus on conformity with the adopted community plan and general plan (Article II, Section 2). Application requirements for various project permit entitlements have been standardized through the Land Development Code and Land Development Manual's Submittal Requirements in order to provide applicants and reviewing bodies with a standardized list of plans and information needed for review. Identical application packages for discretionary permits are sent to both the affected planning group and other reviewing bodies for their review and comment. Staff believes that, while a planning group can engage in discussions with project applicants to address both use and design issues, in its advisory role a planning group may not require additional submitted materials as a precondition of placing a project on its agenda.

One group proposes to modify the bylaw shell to require that applicants submit a number of additional materials, such as a color palette and Police Department Design Review information, for their review. In addition, the group identifies additional conditions that are needed for their favorable review. Some of these, such as "a thoroughfare system that will make it possible for people and goods to be moved in an efficient and convenient manner" are generally consistent with the adopted community plan. Other features go beyond the policy recommendations of the community plan including: "Sites for diversified industrial facilities which would mainly employ residents of [the community]", and "Encouragement of citizen action in improving unsafe, unsanitary and unhealthful conditions".

An additional issue has arisen: at least one planning group is proposing to change currently commercial seats to residential seats in a community with substantial commercial development and where the membership already consists of a vast majority of residential seats. Staff does not believe the compliance effort being undertaken by all planning groups is the appropriate time for any planning group to reallocate seats among community interests when it appears that community interests are becoming less diversified. Staff proposes that no changes to planning group seats be allowed with the current bylaws amendments that serve to reduce diversification of interests on the planning group.

Other bylaws shell provisions are more specific than Council Policy 600-24 language, but have not been determined infeasible or incompatible by planning groups updating their bylaws thus far. These provisions include: deleting all references to an optional “general membership” and using the term “eligible member of the community” exclusively; newly-directed time periods for convening an Elections Subcommittee, qualifying candidates for a March election and presenting candidates to the planning group; requiring proof from “eligible community members” to vote in an election; and, timing of the announcement of election results.

Staff is requiring any planning groups that are also corporations to separate their planning group bylaws from their corporation bylaws. There are fewer than ten affected planning groups, and whether the corporation continues is up to the corporation membership. However, planning groups have been advised that meetings should be convened separately, and any provisions that specifically are allowed under corporation law – such as proxy voting – must not remain in the planning group’s bylaws.

Summary

This report provides examples of the types of bylaws revision issues that planning groups and staff are trying to address. Staff has identified provisions that are being proposed by planning groups that are inconsistent with Council Policy 600-24 and will be presented to the City Council for approval or denial. In addition, staff is seeking LU&H direction on how to address deviations that are consistent with Council Policy 600-24. Staff feels that, in order for community planning groups to maximize their effectiveness as land use advisory bodies, the procedures under which they operate and under which representatives are elected must be made consistent throughout the City (with a few selected, predetermined options on certain specific issues). A fixed bylaw template will allow planning groups to better focus their time and energy on the referred issues and will increase public participation in the voting system and, hopefully, increase the diversity of participation within communities. A uniform set of bylaws is vitally important to maximize the process and substance of planning group work.

Bylaws Update Process

As planning groups complete their bylaws revisions, the CP&CI director and City Attorney will review bylaws and approve the revisions when they are deemed consistent with the bylaw shell and Council Policy 600-24. Where deviations are proposed, CP&CI will schedule those deviations in groups for City Council consideration. The CP&CI

director and City Attorney will then approve revised bylaws incorporating direction from the City Council. Per the adopted council policy, all bylaw revisions should be completed by April of 2007.

In order to facilitate the use of revised bylaws in the March 2007 elections, staff anticipates scheduling a City Council item in late November to consider bylaws deviations not consistent with Council Policy 600-24. Depending on the recommendations of LU&H, deviations from the standardized bylaws shell may also need to be considered. The timing of this LU&H workshop was to determine how to handle proposed deviations from the shell that are still consistent with the council policy.

Regardless of whether a planning group's bylaws are revised for use in the March 2007 elections, staff has indicated to the planning groups that proxy voting should not be allowed. Proxy voting is in the adopted bylaws of several planning group but has always been contrary to the intent of Council Policy 600-24. The October 2005 revisions to the council policy clarified that proxy voting is not allowed.

The Ralph M. Brown Act

On March 7, 2000, the San Diego City Attorney opined that community planning groups are not subject to the Ralph M. Brown Act because they are private organizations that do constitute "legislative bodies." Although planning groups have not followed the strict interpretation of the Brown Act, Council Policy 600-24 and the Administrative Guidelines direct planning groups to follow the 'spirit of the Brown Act' and ensure meetings are open and public, and that the planning groups' business is conducted in a public setting. At the June 20, 2006 City Council meeting on the La Jolla Community Association indemnification and representation issue, the City Attorney indicated that his office will be reconsidering whether community planning groups are legislative bodies subject to the Brown Act. The Mayor's Office is awaiting a formal opinion from the City Attorney on this issue. If planning groups are deemed subject to the Brown Act, a comprehensive review of Council Policy 600-24, the Administrative Guidelines and the bylaws shell will be needed to ensure conformance with the law.

FISCAL CONSIDERATION:

Costs associated with providing assistance to all recognized community planning groups to revise their bylaws to come into compliance with the amended Council Policy 600-24 provisions are being managed as part of the City Planning and Community Investment Department's work program, with possible delay to other program elements.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On October 17, 2005, the City Council voted to adopt Resolution R-300940 to amend Council Policy 600-24 titled *Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups*. The City Council directed that community planning group bylaws be amended to reflect the revised council policy by April of 2007.

COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS:

During the last three years, planning staff has worked closely with community planning groups and CPC on revisions to Council Policy 600-24 and the Administrative Guidelines. Staff

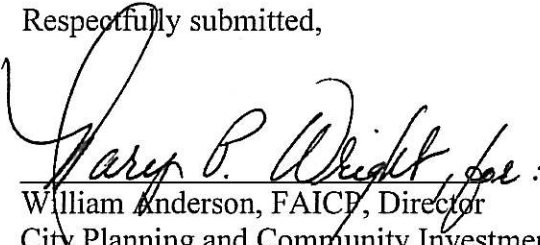
continues to work closely with these organizations on the final element of this work program, revisions to community planning group bylaws.

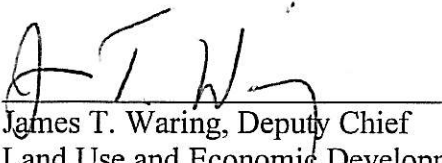
KEY STAKEHOLDERS and PROJECTED IMPACTS:

Key stakeholders in this effort are the existing and prospective community planning group members who are working with the City on their bylaws updates and who will operate under

revised bylaws. In addition, the revisions will positively affect City departments, project applicants and the general public who interact with community planning groups by providing more standardized operating procedures.

Respectfully submitted,


Gary P. Wright, for:
William Anderson, FAICP, Director
City Planning and Community Investment


James T. Waring, Deputy Chief
Land Use and Economic Development

WARING/ANDERSON/MPW

- Attachments:
1. Council Policy 600-24 entitled *Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups*
 2. Revised Standardized Bylaws Shell dated 8-21-06 & Summary of Provisions Revised between March and August shells